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<b>S.M., Appellant</b>	)	
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<b>and</b>	)	<b>Docket No. 07-1319</b>
	)	<b>Issued: October 3, 2007</b>
<b>U.S. POSTAL SERVICE, POST OFFICE,</b>	)	
<b>Broadview Heights, OH, Employer</b>	)	
	)	

### Case Submitted on the Record

Before:  
DAVID S. GERSON, Judge  
MICHAEL E. GROOM, Alternate Judge  
JAMES A. HAYNES, Alternate Judge

On September 28, 2005 appellant, then a 48-year-old distribution clerk, filed an occupational disease claim alleging that she developed neck, shoulder and arm pain in the performance of duty. She first became aware of her condition on September 5, 2005 and first related it to her employment on September 19, 2005. Appellant attributed the development of her condition to continuous heavy lifting and pushing and stated that her symptoms were “a

repeat” of symptoms previously experienced in December 2001.<sup>1</sup> She stopped work on September 20, 2005.

Appellant submitted a September 2, 2005 duty status report from Dr. Joseph Zayat, a Board-certified neurologist, who stated that she was capable of performing full-duty work at that time. In a September 24, 2005 note, Dr. James D. Krystosik, a chiropractor, indicated that appellant was currently receiving treatment for a “severe sprain/strain of the cervical spine.” In an October 10, 2005 attending physician’s report, Dr. Krystosik diagnosed bulging discs at the C5-6 and C6-7 levels as well as degenerative changes from C3 to C7. He indicated that appellant’s condition was employment related and that her medical history was significant for a prior cervical strain. In a September 2, 2005 treatment note, Dr. Zayat diagnosed cervical herniated disc with associated cervicgia and cervical radiculopathy.

In an October 3, 2005 diagnostic report, Dr. Ramon R. De Guzman, a neuroradiologist, indicated that a magnetic resonance imaging (MRI) scan of appellant’s cervical spine revealed “diffuse degenerative changes of the cervical spine with the posterior disc bulges at C3-4 through C6-7.” He also concluded that there was no evidence of spinal canal or neural foraminal stenosis.

In an undated statement received on October 27, 2005, appellant stated that she had experienced neck and shoulder pain in 2001. However, Dr. Zayat gave her a “clean bill of health” on September 2, 2005 with regard to her neck and shoulder, which “at that time was an old injury.” Appellant stated that she worked her “usual job” on Labor Day weekend of 2005, which involved throwing parcels, sorting carrier routes and pushing and pulling loads. She explained that the first two weeks of September 2005 involved an unusually heavy mail load and she experienced pain and stiffness in her neck, right shoulder and right arm.

Jeff Masno, a medical technician in Dr. Krystosik’s office, stated that appellant presented with complaints of neck and right arm pain. In an October 24, 2005 disability certificate, Dr. Krystosik diagnosed a severe strain/sprain of the neck with associated bulging discs.

On November 14, 2005 the Office advised appellant of the evidence needed to establish her claim. The Office also advised appellant of the circumstances under which a chiropractor may be considered a physician under the Federal Employees’ Compensation Act. No additional evidence was received.

By decision dated December 30, 2005, the Office denied appellant’s claim, finding that she did not establish that a specific incident or exposure occurred at the time, place and in the manner alleged.

The Office received a November 30, 2005 statement from appellant further describing her job duties and the origins of her claimed condition. In a November 25, 2005 report, Dr. Krystosik stated that she was asymptomatic prior to September 2005. He explained that, in

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<sup>1</sup> The record reflects that appellant had previously submitted an occupational disease claim in December 2001, which was assigned file number 092017609 by the Office and was accepted for cervical strain. Claim No. 092017609 is not before the Board on the present appeal.

early September 2005, appellant experienced “an exacerbation of her original injury” of December 2001. Dr. Krystosik provided the results of his physical examination and explained: “Subluxation of C3-4 and C6-7 were noted ... and a bulging disc at C3-4 and C6-7 was verified by [an] MRI [scan] performed on October 3, 2005.” He stated: “In my expert opinion there is a causal relation between the C3-4 and C6-7 bulging discs and associated subluxations ... triggered by the physical demands of [appellant’s] job duties.”

In a December 12, 2005 report, Dr. Zayat stated that he examined appellant on September 2, 2005 and that she presented with complaints of pain extending into the right shoulder blade aggravated by moving the head and neck. Her pain as of September 2, 2005 was intense enough to make her arm tired and weak and she had a pulling sensation along the neck. However, Dr. Zayat noted that his physical examination on September 2, 2005 revealed normal findings, no significant tenderness and full cervical range of motion. He opined that appellant was a good candidate for evaluation and treatment by a chiropractor based upon a December 29, 2001 MRI scan report which revealed minimal disc bulging at the C5-6 level, right lateral disc herniation at C6-7 and minimal left hypertrophy at C7-T1.

Appellant requested reconsideration on January 3, 2006. She indicated that she filled out both an occupational disease claim form and a recurrence of disability claim form, but that the employing establishment only submitted the occupational disease claim. Appellant stated: “even though I received conflicting information it is clear that they selected the CA-2 for a new injury and gave me a new file number 092064525 which is not right.”

By decision dated February 3, 2006, the Office modified the December 30, 2005 decision to reflect that appellant had established her work duties as alleged. The claim was denied on the grounds that the medical evidence was not sufficient to establish a causal relationship between her claimed condition and the factors of her employment.

In a February 20, 2006 report, Dr. Zayat noted reviewing the Office’s February 3, 2006 decision. He stated: “Based upon [appellant’s] history and that her symptoms developed in the aftermath of her having engaged in heavy manual labor at work ... it is conceivable that the exacerbation of pain and symptoms were a result of her employment.”

In a January 11, 2007 letter, the Office advised appellant that her claim had been processed as an occupational disease claim because she had attributed the onset of her symptoms to a period of heavy labor over the course of several weeks.

On January 27, 2007 appellant requested reconsideration. She provided chart notes from Dr. Zayat, dated May 31, 2002 to April 21, 2006. On February 8, 2007 appellant requested that the case files in the present appeal, file number 092064525, and her prior claim, file number 2017609, be combined.

By decision dated March 26, 2007, the Office denied modification of the February 3, 2006 decisions.

## **LEGAL PRECEDENT**

An employee seeking benefits under the Act<sup>2</sup> has the burden of establishing the essential elements of his or her claim, including the fact that the individual is an “employee of the United States” within the meaning of the Act, that the claim was timely filed within the applicable time limitation period of the Act, that an injury was sustained in the performance of duty as alleged and that any disabilities and/or specific conditions for which compensation is claimed are causally related to the employment injury.<sup>3</sup> These are the essential elements of each and every compensation claim regardless of whether the claim is predicated upon a traumatic injury or an occupational disease.<sup>4</sup>

An occupational disease or injury is one caused by specified employment factors occurring over a longer period than a single shift or workday.<sup>5</sup> The test for determining whether appellant sustained a compensable occupational disease or injury is three pronged. To establish the factual elements of the claim, appellant must submit: “(1) medical evidence establishing the presence or existence of the disease or condition for which compensation is claimed; (2) a factual statement identifying the factors alleged to have caused or contributed to the presence or occurrence of the disease or condition; and (3) medical evidence establishing that the factors identified by the claimant were the proximate cause of the condition for which compensation is claimed or, stated differently, medical evidence establishing that the diagnosed condition is causally related to the factors identified by the claimant.”<sup>6</sup>

The medical evidence required to establish causal relationship generally is rationalized medical opinion evidence. Rationalized medical opinion evidence is medical evidence which includes a physician’s rationalized opinion on the issue of whether there is a causal relationship between the claimant’s diagnosed condition and the implicated employment factors.<sup>7</sup> The opinion of the physician must be based on a complete factual and medical background of the claimant<sup>8</sup> and must be one of reasonable medical certainty<sup>9</sup> explaining the nature of the relationship between the diagnosed condition and the specific employment factors identified by the claimant.<sup>10</sup>

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<sup>2</sup> 5 U.S.C. §§ 8101-8193.

<sup>3</sup> *Elaine Pendleton*, 40 ECAB 1143 (1989).

<sup>4</sup> *Victor J. Woodhams*, 41 ECAB 345 (1989).

<sup>5</sup> *D.D.*, 57 ECAB \_\_\_\_ (Docket No. 06-1315, issued September 14, 2006).

<sup>6</sup> *Michael R. Shaffer*, 55 ECAB 386, 389 (2004), citing *Lourdes Harris*, 45 ECAB 545 (1994); *Victor J. Woodhams*, *supra* note 4.

<sup>7</sup> *Conard Hightower*, 54 ECAB 796 (2003); *Leslie C. Moore*, 52 ECAB 132 (2000).

<sup>8</sup> *Tomas Martinez*, 54 ECAB 623 (2003); *Gary J. Watling*, 52 ECAB 278 (2001).

<sup>9</sup> *John W. Montoya*, 54 ECAB 306 (2003).

<sup>10</sup> *Judy C. Rogers*, 54 ECAB 693 (2003).

## ANALYSIS

The Board finds that appellant did not meet her burden of proof to establish that her cervical condition was caused by her federal employment. The evidence supports that she performed lifting and pushing duties during the first two weeks of September 2005. However, appellant has submitted insufficient medical evidence to support that these accepted employment activities caused or aggravated her diagnosed cervical condition.

Appellant submitted several reports from Dr. Krystosik and Mr. Masno, a medical technician in Dr. Krystosik's chiropractic practice. These reports are not probative because Dr. Krystosik and Mr. Masno are not physicians within the meaning of the term as defined by the Act.<sup>11</sup> Mr. Masno is a layperson and, as such, is not considered competent to render a medical opinion pursuant to Board precedent.<sup>12</sup> Dr. Krystosik is a chiropractor. The Board has held that a chiropractor's report may be considered competent medical evidence only where the chiropractor used x-ray testing to diagnose a spinal subluxation.<sup>13</sup> The chiropractor's use of other tests, such as the October 3, 2005 MRI scan, to diagnose spinal subluxation does not qualify Dr. Krystosik as a physician under the Act.<sup>14</sup> Dr. Krystosik did not diagnose a spinal subluxation based on x-ray testing. The question of causal relationship is a medical issue which must be established through probative, rationalized medical opinion.<sup>15</sup> Dr. Krystosik's reports are not competent given the limitations of section 8101(2).

The reports of Dr. Zayat are insufficient to establish appellant's claim because the physician did not address causal relationship between the diagnosed conditions and appellant's employment duties.<sup>16</sup> Dr. Zayat addressed causal relationship in a February 20, 2006 report, stating: "Based upon [appellant's] history that her symptoms developed in the aftermath of her having engaged in heavy manual labor at work ... it is conceivable that the exacerbation of pain and symptoms were a result of her employment." This report is insufficient to establish causal relationship as his opinions on causal relationship is speculative. Dr. Zayat merely noted that appellant's symptoms began after she performed duties at work. However, the Board has held that the mere fact that a disease or condition manifests itself or worsens during a period of employment<sup>17</sup> or that work activities produce symptoms revelatory of an underlying condition<sup>18</sup>

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<sup>11</sup> See 5 U.S.C. § 8101(2). This subsection defines the term "physician." See also *Charley V.B. Harley*, 2 ECAB 208 (1949) (where the Board held that a medical opinion, in general, can only be given by a qualified physician).

<sup>12</sup> *James A. Long*, 40 ECAB 538 (1989).

<sup>13</sup> See *Jay K. Tomokiyo*, 51 ECAB 361 (2000).

<sup>14</sup> See *id.* Dr. De Guzman, who obtained the MRI scan report, did not find any subluxation of the cervical spine. Rather, he noted disc bulging from C3 to C7.

<sup>15</sup> See *Steven S. Saleh*, 55 ECAB 169 (2003).

<sup>16</sup> See, e.g. *Charles H. Tomaszewski*, 39 ECAB 461, 467-68 (1988) (medical evidence which does not offer any opinion regarding the cause of an employee's condition is of limited probative value on the issue of causal relationship).

<sup>17</sup> *William Nimitz, Jr.*, 30 ECAB 567, 570 (1979).

<sup>18</sup> *Richard B. Cissel*, 32 ECAB 1910, 1917 (1981).

does not raise an inference of causal relationship between the condition and the employment factors. Dr. Zayat's opinion also lacks rationale or any explanation supporting his opinion on causal relationship. He does not describe in detail the processes by which specific work factors would have caused or aggravated appellant's cervical condition.<sup>19</sup> His opinion is speculative as he did not conclusively support causal relationship but rather merely opined that it was "conceivable" that her condition could be related to her employment.<sup>20</sup> For these reasons, appellant did not establish her claim for an occupational disease.

### **CONCLUSION**

The Board finds that appellant did not meet her burden of proof in establishing that she developed a cervical condition in the performance of duty.

### **ORDER**

**IT IS HEREBY ORDERED THAT** the March 26, 2007 decision of the Office of Workers' Compensation Programs is affirmed.

Issued: October 3, 2007  
Washington, DC

David S. Gerson, Judge  
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge  
Employees' Compensation Appeals Board

James A. Haynes, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>19</sup> See *Victor J. Woodhams*, *supra* note 4.

<sup>20</sup> See *Leonard J. O'Keefe*, 14 ECAB 42, 48 (1962) (where the Board held that medical opinions based upon an incomplete history or which are speculative or equivocal in character have little probative value).